

**Federal Communications Commission
2002 Biennial Regulatory Review**

**Staff Report
of the Wireless Telecommunications Bureau**

**WT Docket No. 02-310
GC Docket No. 02-390**

December 31, 2002

I. OVERVIEW

1. Section 11 of the Communications Act of 1934, as amended, requires the Commission (i) to review biennially its regulations that apply to operations or activities of telecommunications service providers; and (ii) to determine whether those regulations are “no longer in the public interest as the result of meaningful economic competition between providers of such service.”¹ This Staff Report summarizes the findings of an extensive review of the Federal Communications Commission’s rules implicated by Section 11 that are within the purview of the Wireless Telecommunications Bureau (WTB), *i.e.*, rules that “apply to the activities or operations” of wireless telecommunications carriers. Accompanying this report is a detailed analysis that identifies each rule part under review, explains the purpose, benefits, and disadvantages of the particular rule or rule part, and lists any staff recommendation for retaining, modifying, or repealing rules within that part.

II. THE 2002 BIENNIAL REGULATORY REVIEW

2. This review builds upon the Staff Report completed as part of the 2000 Biennial Regulatory Review.² As in the *2000 Biennial Review Staff Report*,³ this report provides detailed documentation of the staff’s review. In evaluating the rules, staff applied a consistent analysis to determine whether to recommend retention, modification, or elimination of Commission rules. Staff’s review considered: (1) the purpose of the rule; (2) the advantages of the rule;⁴ (3) the disadvantages of the rule;⁵ and (4) what impact competitive developments have had on the rule. This analysis allowed the staff to make reasoned determinations about whether a rule should be changed or eliminated as a result of meaningful economic competition among providers of telecommunications services.

3. This Report summarizes staff’s review of the Commission rules that affect wireless telecommunications carriers, the status of ongoing and recent initiatives, and recommendations on whether specific rules should be retained, modified, or repealed. The staff’s recommendations are reported in more detail in the attached rule part analysis,⁶ which also summarizes the comments that were submitted in response to the Commission’s September 26, 2002 *Public Notice* initiating this Biennial Review.⁷ In conducting this Section 11 review, staff

¹ 47 U.S.C. § 161.

² See 2000 Biennial Regulatory Review, CC Docket No. 00-175, *Report*, 16 FCC Rcd 1207 (2001); Federal Communications Commission Biennial Regulatory Review 2000, CC Docket No. 00-175, *Updated Staff Report* (rel. Jan. 17, 2001) (*2000 Biennial Review Staff Report*).

³ See generally *2000 Biennial Review Staff Report*.

⁴ This includes consideration of how precisely and cost-effectively the rule addresses the problem at issue.

⁵ This includes consideration of whether the rule is over- or under-inclusive in its scope, and whether compliance imposes unnecessary costs.

⁶ See Appendix IV.

⁷ See “The Commission Seeks Public Comment in the 2002 Biennial Review of Telecommunications Regulations within the Purview of the Wireless Telecommunications Bureau,” WT Docket No. 02-310, *Public Notice* (FCC 02-264) (rel. Sept. 26, 2002) (*Public Notice*).

considered: (1) the purpose of the rule; (2) the advantages of the rule; (3) the disadvantages of the rule; and (4) the impact competitive developments may have had on the need for the rule.

4. In addition to evaluating rules that affect wireless telecommunications carriers on the basis of whether they are “no longer necessary in the public interest as the result of meaningful competition,” WTB staff has taken the opportunity to consider whether any such rules should be streamlined, modified, or eliminated for reasons other than those related to competitive developments that fall within the scope of Section 11 review. Thus, staff has reviewed whether circumstances other than the development of meaningful economic competition (e.g., technological change since the adoption of the rule, inconsistency in regulation of similarly situated services, reduction of regulatory burdens) justify streamlining, modification, or repeal of particular rules.

5. Once the Commission has made its determinations with respect to the recommendations in this report, staff expects that the Commission would initiate proceedings to modify or eliminate selected rules. These proceedings would conform to Commission procedural rules and the Administrative Procedure Act. Some of these proceedings have been initiated already, while we anticipate that others will be initiated next year.⁸

III. SUMMARY OF REVIEW

6. The Wireless Telecommunications Bureau is responsible for licensing and regulating all wireless communications services other than broadcast and satellite services. Wireless communications services include commercially provided services such as cellular, Personal Communications Services (PCS), and paging, as well as public safety and private radio services.

7. The functions of the Bureau largely derive from Title III of the Communications Act, which governs licensing of spectrum in general and wireless services in particular.⁹ The vast majority of the Commission’s regulations affecting wireless carriers consist of: (1) allocation and service rules; (2) procedural rules concerning licensing and auctions; and (3) technical and operational rules.

8. The market for wireless carriers has changed dramatically in recent years as a result of entry by new wireless competitors, substantial growth, and increased competition in the wireless market. In 1993, Congress granted authority to the Commission to award wireless licenses by auction.¹⁰ Since that time, the Commission has conducted 41 spectrum auctions for services such as broadband and narrowband PCS, Specialized Mobile Radio (SMR), Wireless Communications Service (WCS), Local Multipoint Distribution Service (LMDS), and numerous

⁸ See Appendix I.

⁹ See generally 47 U.S.C. Title III.

¹⁰ Omnibus Budget Reconciliation Act of 1993, Pub. Law No. 103-66, 107 Stat. 312. See 47 U.S.C. § 309(j).

other fixed and mobile wireless services.¹¹ These auctions have resulted in a dramatic increase in the number of competing wireless service providers.¹²

9. As a result of increased wireless licensing and new competition, the Commission has substantially deregulated many aspects of wireless services. The Commission has adopted a number of policies and rule changes to streamline application processing and reduce regulatory burdens, as discussed below. The dynamic and rapidly evolving nature of the wireless industry continues to make it important for the Commission to review its wireless regulations on a regular basis.

A. Scope of Review

10. On September 26, 2002, the Commission issued a Public Notice seeking comment on the rules and regulations within its purview under the 2002 Biennial Review.¹³ The Bureau has reviewed the following rule parts implicated by Section 11 that affect wireless telecommunications carriers:¹⁴

- Part 1 – Practice and Procedure – In addition to containing the procedural rules of general applicability to all Commission licensees, contains certain rules that explicitly address wireless telecommunications applications and proceedings, and includes procedures relating to competitive bidding, and payment of regulatory fees.
- Part 17 – Construction, Marking, and Lighting of Antenna Structures – Contains rules pertaining to the construction, marking, lighting, registration, and notification relating to radio antenna structures used for provision of wireless radio services.
- Part 20 – Commercial Mobile Radio Services – Contains rules applicable to commercial mobile radio service providers, including rules relating to citizenship, interconnection to facilities of local exchange carriers, resale, roaming, Title II obligations, and 911 service.
- Part 21 – Domestic Public Fixed Radio Services – Contains rules applicable to general licensing and application filing requirements, technical standards, and operations for Multipoint Distribution Service.
- Part 22 – Public Mobile Services – Contains rules governing domestic, mobile, common carrier services, including the cellular telephone service, that are authorized to provide radio telecommunication services for hire to the public.

¹¹ See <http://www.fcc.gov/wtb/auctions>.

¹² See generally In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Seventh Report*, 17 FCC Rcd 12985 (2002) (*Seventh CMRS Competition Report*). There has been a dramatic increase in the number of competing wireless providers since the first annual report on CMRS competition was issued in 1996.

¹³ See “The Commission Seeks Public Comment in the 2002 Biennial Review of Telecommunications Regulations within the Purview of the Wireless Telecommunications Bureau,” WT Docket No. 02-310, *Public Notice* (FCC 02-264) (rel. Sept. 26, 2002) (*Public Notice*).

¹⁴ *Id.* The rule parts are discussed herein as set forth as in Title 47 of the Code of Federal Regulations. For streamlining purposes, this Staff Report does not, *infra*, cite each specific C.F.R. provision (e.g., 47 C.F.R. Part 1 or 47 C.F.R. § 1.923) for the particular Part or rule discussed herein.

- Part 24 – Personal Communications Services – Contains rules applicable to general licensing and application filing requirements, technical standards, and operations for narrowband and broadband Personal Communications Services licensees.
- Part 27 – Wireless Communications Services – Contains rules governing the provision of miscellaneous wireless communications services on various frequency bands allocated for flexible use pursuant to Section 303(y) of the Communications Act.
- Part 80 – Stations in the Maritime Service – Contains licensing, technical, and operational rules for various maritime radio services.
- Part 90 – Private Land Mobile Radio Services – Contains rules applicable to general licensing and application filing requirements, technical standards, and operations for Specialized Mobile Radio and other commercial, private, and public safety licensees.
- Part 95 – Personal Radio Service – Contains licensing, technical, and operational rules for the 218-219 MHz Service.
- Part 101 – Fixed Microwave Services – Contains licensing, technical, and operational rules for private and common carrier fixed microwave services, and includes subparts governing the 24 GHz Service, Local Multipoint Distribution Service, 39 GHz Service, and Multiple Address System Service.

11. In response to the *Public Notice*, the Commission received fifteen comments and eight reply comments.¹⁵

B. Recent and Ongoing Activities

1. Major Initiatives

12. Prior to and contemporaneously with the 2002 Biennial Regulatory Review, the Bureau has engaged in a number of major initiatives to streamline and eliminate unnecessary rules affecting wireless services.

(a) Elimination of the Commercial Mobile Radio Service (CMRS) Spectrum Cap Rule

13. As part of its 2000 Biennial Review, the Commission determined in 2001 to eliminate the CMRS Spectrum Cap rule, effective January 1, 2003, in favor of case-by-case review of transactions raising competitive issues.¹⁶ Additionally, the Commission eliminated the

¹⁵ Also included in this docketed proceeding are comments contained in the Petition for Rule Making concerning the 2002 Biennial Review filed by the Cellular Telecommunications and Internet Association on July 25, 2002. *See Public Notice* at n.1.

¹⁶ *See* 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14, *Report and Order*, 16 FCC Rcd 22668 (2001). Prior to January 1, 2003, the Commission raised the spectrum cap to 55 MHz in all markets for the duration of its existence. *Id.*

cellular cross-interest rule in Metropolitan Statistical Areas (MSAs), but retained the rule in Rural Service Areas (RSAs).¹⁷

(b) Major Revisions/Streamlining of Competitive Bidding Rules

14. In 2002, the Bureau issued an order making conforming edits to service-specific competitive bidding rules and portions of the Part 1 general competitive bidding rules.¹⁸ These conforming edits furthered the Bureau's continuing efforts to streamline its procedures in accordance with the Commission's Biennial Review obligations set forth in Section 11(a) of the Communications Act of 1934, as amended, and the recommendations contained in the *2000 Biennial Staff Report*.

(c) Revisions to the Cellular Rules

15. In September 2002, the Commission modified or eliminated Part 22 Cellular rules that had become outdated due to technological change, increased competition, or supervening rules. Among other things, the Commission adopted a five-year sunset of the requirement that cellular licensees provide analog service, but stated that it would not eliminate the rule at the end of the five-year period if hearing aid compatible devices were not available.¹⁹ This proceeding was an outgrowth of the 2000 Biennial Review.

(d) Local Number Portability (LNP)

16. In 2002, the Commission adopted an order extending the wireless LNP implementation deadline for a period of one year, until November 24, 2003, to allow adequate time to resolve all outstanding wireless LNP implementation issues, including training personnel and other non-technical tasks, and critically, public safety coordination.²⁰ Further, the extension allows wireless carriers to focus on the successful implementation of thousands-block number

¹⁷ Petitions for reconsideration have been filed challenging the Commission's retention of the cellular cross-interest rule in RSAs, and currently are pending before the Commission.

¹⁸ See Amendment of Parts 1, 21, 22, 24, 25, 27, 73, 74, 80, 90, 95, 100, and 101 of the Commission Rules – Competitive Bidding, *Order*, 17 FCC Rcd 6534 (2002); see also Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293, 15330, ¶ 78, 15336, ¶ 101 (2000) (“We hereby instruct the Wireless Telecommunications Bureau to make conforming edits to the Code of Federal Regulations consistent with this decision.”).

¹⁹ See Year 2000 Biennial Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, WT Docket No. 01-108, *Report and Order*, 17 FCC Rcd 18401, 18410-11 (2002); Year 2000 Biennial Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, WT Docket No. 01-108, *Second Report and Order*, 17 FCC Rcd 18485 (2002); Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, WT Docket No. 01-108, *Erratum*, DA 02-2969 (rel. Nov. 4, 2002) (*Cellular Biennial Review First Report and Order* and *Cellular Biennial Review Second Report and Order*, respectively).

²⁰ Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation, WT Docket No. 01-184, *Memorandum Opinion & Order*, 17 FCC Rcd 14972 (2002).

pooling and will reduce the burdens and potential risks associated with the simultaneous implementation of thousands-block number pooling and porting. The Commission declined to forbear completely from applying the wireless LNP rules because it determined that they are necessary to preserve consumer choice and enhance competition among CMRS carriers and between the wireless and wireline industries.

(e) Elimination of the Wireless Resale Rule

17. The Commission has eliminated its wireless resale rule, Section 20.12, which prohibits CMRS providers from unreasonably restricting resale of their services. The Commission previously determined to sunset the rule five years after completion of its initial grant of broadband PCS licenses.²¹ The rule sunset on November 24, 2002.

(f) Elimination of LEC and CMRS Affiliation Requirement

18. The Commission has also eliminated the “separate affiliate” requirement for incumbent LECs under Section 20.20 of the Commission’s rules.²² The rule required an incumbent LEC providing in-region broadband CMRS service to provide such services through an affiliate that satisfied certain requirements. The rule sunset on January 1, 2002.

C. Summary of Recommendations

19. Pursuant to Section 11, the Bureau has determined that there are some areas in which the development of meaningful competition among wireless telecommunications providers may warrant changing or eliminating regulations. In addition, as discussed above, the staff recommends streamlining or eliminating a number of rules for reasons that fall outside the scope of Section 11. In this regard, we have been guided by the many comments we have received in this proceeding. As summarized below, the staff recommends revising or eliminating a number of several specific rules, either as part of various efforts already underway or as part of newly initiated proceedings.²³

1. Review/Revision/Streamlining Efforts Already Underway

20. The Bureau already is in the process of considering revisions or possible elimination of numerous rules relating to wireless radio services. These efforts include revisions guided by competitive developments contemplated by Section 11 as well as streamlining efforts that fall outside the scope of Section 11. They are briefly summarized below.

21. *Sections 1.924 and 101.31 rules pertaining to Quiet Zones (and related rule sections).* The Commission currently is considering ways in which it can streamline, modify, or

²¹ See “Notice Commencement of Five-Year Preceding Termination of Resale Rule Applicable to Certain Covered Commercial Mobile Radio Service Providers,” CC Docket No. 94-54, *Public Notice*, 13 FCC Rcd 17427 (1998).

²² 47 C.F.R. § 20.20(f).

²³ For a detailed discussion of the staff’s rule part analysis, including a discussion of each of the comments filed in this Biennial Review proceeding and the staff’s recommendations, see Appendix IV, *infra*.

eliminate requirements related to Quiet Zones, and has sought comment on these issues in the *Quiet Zones Notice of Proposed Rulemaking*.²⁴

22. *Section 20.11 rules relating to intercarrier compensation.* The Commission currently is exploring ways of reforming its intercarrier compensation rules, including the rules set forth in Section 20.11. It is examining the existing patchwork of interconnection rules and seeking to adopt an approach that minimizes the need for regulatory intervention.²⁵

23. *Section 20.12(c) rules relating to CMRS carrier “roaming” obligations.* The Commission is examining whether, in light of competitive and other developments, it should eliminate the manual roaming rule applicable to CMRS carriers.²⁶

24. *Part 21 rules relating to Multipoint Distribution Service (MDS).* The Bureau has recently sought comment on a proposal to revise applicable Part 21 rules relating to MDS that could facilitate provision of two-way fixed and mobile services, while allowing others to continue to provide one-way video services.²⁷

25. *Part 22 cellular rules.* The Commission has recently issued its 2000 Biennial Review orders streamlining and revising the Part 22 cellular rules.²⁸ (Certain harmonizing revisions were also made with regard to certain Part 24 broadband PCS rules.) Petitions for reconsideration of the Commission’s actions may still be filed.

26. *Part 80 rules.* In the Part 80 rules, the Commission recently converted the Automated Maritime Telecommunications System (AMTS) to geographic licensing,²⁹ and has proposed to consolidate, revise, and streamline the Part 80 rules to address new international maritime requirements, improve the operational ability of all users of marine radios, and remove unnecessary or duplicative requirements.³⁰

27. *Part 90 rules relating to Intelligent Transportation Systems (ITS) Radio Service rules.* The Commission currently is in the process of examining the two subcategories of services within ITS. It recently issued a Notice of Proposed Rulemaking seeking comment on

²⁴ See generally Review of Quiet Zones Application Procedures, WT Docket No. 01-319, *Notice of Proposed Rulemaking*, 16 FCC Rcd 20690 (2001) (*Quiet Zones NPRM*).

²⁵ See Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, 16 FCC Rcd 9610 (2001).

²⁶ See Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Service, WT Docket No. 00-193, *Notice of Proposed Rulemaking*, 15 FCC Rcd 21628 (2000) (*Roaming Notice*).

²⁷ See Wireless Telecommunications Bureau Seeks Comment on Proposal to Revise Multichannel Multipoint Distribution Service and the Instructional Television Fixed Service Rules, *Public Notice*, DA 02-2732 (rel. Oct. 17, 2002).

²⁸ See *Cellular Biennial Review First Report and Order, supra; Cellular Biennial Review Second Report and Order, supra*.

²⁹ See Amendment of the Commission’s Rules Concerning Maritime Communications, PR Docket No. 92-257, *Second Memorandum Opinion and Order and Fifth Report and Order*, 17 FCC Rcd 6685 (2002).

³⁰ See Amendment of Parts 13 and 80 of the Commission’s Rules Concerning Maritime Communications, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 00-48, 17 FCC Rcd 6741 (2002).

the licensing and service rules for the Dedicated Short Range Communications Service (DSRCS),³¹ and is currently investigating issues regarding the Location and Monitoring Service (LMS) in the context of a Petition for Rulemaking.³²

2. Proceedings that Staff Recommends Be Initiated in Order To Modify or Repeal Current Rules

28. In response to the comments received or as a result of ongoing review of the rules within the purview of the Bureau, staff recommends initiating a new proceeding or proceedings to consider modifying or eliminating the following rules. The modifications proposed below generally involve streamlining of procedural, technical, and operational rules for reasons that fall outside the scope of Section 11 review.

29. *Harmonization and streamlining of various technical rules in Parts 1, 20, 22, 24, 27, and 90.* Staff recommends that the Commission initiate a proceeding to review the technical rules applicable to various wireless services in an effort to harmonize and streamline them, wherever possible, to create greater consistency and parity throughout CMRS.

30. *Section 1.923 filing requirements relating to “pending litigation.”* While staff believes that the requirement that wireless applicants file certain information concerning pending litigation related to felonies or unfair methods of competition involves identifying matters that could affect an entity’s qualification to hold a license under Commission policies and provisions of the Communications Act, staff also recognizes that the requirement may impose substantial burdens on many applicants. Accordingly, staff recommends that the Commission consider making certain streamlining efforts with regard to this requirement in order to facilitate processing of applications.

31. *Section 1.923 filing requirements relating to foreign ownership.* While staff believes that the Commission should continue to require, pursuant to Section 1.923, that applicants certify to several issues regarding their compliance with the foreign ownership provisions of Sections 310(a) and (b) of the Act, staff recommends that the Commission consider making certain streamlining efforts with regard to those certifications. Such changes could facilitate processing of applications involving foreign ownership.

32. *Section 1.929 rule relating to whether certain licensee filings are classified as “major” or “minor.”* Staff recommends that the Commission consider modifying Section 1.929(c)(4)(v) and/or 1.929(k) to specify that the deletion of a site from a multi-site license in the Private Land Mobile Radio Service (PLMRS) is a “minor” change that requires neither frequency coordination (pursuant to a Form 601 filing) nor the Commission’s prior approval.

³¹ See Amendment of the Commission’s Rules Regarding Dedicated Short-Range Communication Services in the 5.850-5.925 GHz Band, WT Docket No. 01-90 and ET Docket No. 98-95, *Notice of Proposed Rulemaking and Order*, FCC 02-302 (rel. Nov. 15, 2002).

³² See “Wireless Telecommunications Bureau Seeks Comment On Petition For Rulemaking Regarding Location And Monitoring Service Rules,” *Public Notice*, 17 FCC Rcd 6438 (WTB 2002); “Wireless Telecommunications Bureau Extends Comment Cycle On Petition For Rulemaking Regarding Location And Monitoring Service Rules,” *Public Notice*, 17 FCC Rcd 8377 (WTB 2002).

33. *Section 1.2111(a) filing requirements for applications for transfers of control or assignment of licenses.* Staff recommends that the Commission consider revising section 1.2111(a) to eliminate the requirement that an applicant seeking approval for a transfer of control or assignment of a license within three years of receiving the license through competitive bidding file transaction documents with the Commission.

34. *Part 17 rules.* WTB staff recommends that the Commission institute a proceeding to examine the Part 17 rules to modify or eliminate, without compromising public safety goals, any rules which create unnecessary administrative burdens or are apt to confuse owners and licensees who attempt to comply with our Part 17 rules.

35. *Part 22 non-cellular rules.* Staff recommends that the Commission initiate a proceeding to review the non-cellular services in Part 22 – including the Paging and Radiotelephone Service, Rural Radio Service, Air-Ground Telephone Service, and Offshore Radiotelephone Service rules – in order to streamline its rules, and revise or eliminate them wherever appropriate.

36. *Section 22.953 map filing requirements applicable to cellular licensees.* Staff recommends that the Commission institute a proceeding to streamline these requirements.

37. *Section 24.232(a) technical requirements relating to certain power limitations applicable to broadband Personal Communications Service (PCS).* Staff recommends that the power limitation restrictions applicable to broadband PCS be reexamined to consider modifying this rule to establish a more technology-neutral way of establishing a power limit that does not penalize the use of multi-carrier power amplifiers.

38. *Section 90.175 frequency coordination requirements.* Staff recommends initiating a rulemaking to consider whether to eliminate the frequency coordination requirement for General Category channels in certain circumstances, and to exclude applications seeking to delete a transmitter site, a frequency, or both, from the prior frequency coordination requirement.

39. *Section 90.210 emission mask “G” technical rules.* Staff recommends initiating a rulemaking to consider revising certain emission mask requirements for Private Land Mobile Radio services under Section 90.210 in order to conform them with less restrictive emission masks in other land mobile services. This revision could enhance design flexibility without diminishing interference protection.

40. *Part 90 requirements generally applicable to 800 MHz and/or 900 MHz Services.* Because a number of Part 90, subpart S rules appear no longer to serve a regulatory purpose, or are inconsistent with the Commission’s policies regarding flexible use of spectrum, staff recommends their elimination.

41. *Section 90.635(a) and (c) requirements relating to power limits applicable to the 800 MHz Service.* Staff recommends initiating a proceeding to consider whether to eliminate the suburban/urban distinction applicable to 800 MHz Service under Section 90.635(a) and the distinction between limited service area systems and non-limited service area systems set forth in Section 90.635(c).

42. *Section 90.743(c) and related rules applicable to site-based 220 MHz licensees.* Staff recommends initiating a rulemaking to revise rule Section 90.743(c) to reflect that Phase I non-nationwide licensees have license terms of ten years, and not five years as currently specified. Further, staff recommends that consideration be given to whether certain rules applicable to site-based licensees continue to be necessary. For example, Section 90.737 imposes certain reporting requirements and restrictions on assignments of unconstructed site-based licenses that were intended to prevent speculation and trafficking in licenses awarded by lottery. Now that licensing by lottery has been discontinued, however, these rules may actually impede the transferability of 220 MHz spectrum and may no longer be necessary.

IV. APPENDICES

43. Attached to this Staff Report are four appendices. Appendix I lists all of the proceedings initiated pursuant to the 2000 Biennial Regulatory Review, as well as major related proceedings that have streamlined, revised, or eliminated rule provisions within the purview of the Bureau. Appendix II lists the commenting parties in this proceeding. Appendix III provides staff acknowledgements. Finally, Appendix IV provides a full analysis of the rule parts implicated by Section 11 within the Bureau's purview, discusses advantages and disadvantages associated with the particular rules, summarizes comments received, and details staff recommendations.

APPENDIX I:

2000 BIENNIAL REGULATORY REVIEW AND RELATED PROCEEDINGS

I. PROCEEDINGS INITIATED – COMPLETED/SIGNIFICANT ORDERS ISSUED

- (1) Commission adopted competitive bidding rules for the 24 GHz band. *See* In the Matter of Amendment to Parts 1, 2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz, WT Docket No. 99-327, *Order on Reconsideration*, 16 FCC Rcd 11156 (2001).
- (2) Commission eliminated the separate affiliate requirement for incumbent LECs under Section 20.20 of the Commission’s rules, with rule being sunset on January 1, 2002. *See* Amendment of the Commission’s Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, WT Docket No. 96-162, *Report and Order*, FCC 97-352, 12 FCC Rcd 15668 (1997).
- (3) Commission eliminated the CMRS spectrum cap rule, effective January 1, 2003, in favor of case-by-case review of transactions raising competitive issues, and eliminated the cellular cross-interest rule in Metropolitan Statistical Areas (MSAs) (but retained the rule in Rural Service Areas (RSAs)); during the duration of the spectrum cap’s existence, the Commission raised the spectrum cap to 55 MHz in all markets. *See* 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14, *Report and Order*, 16 FCC Rcd 22668 (2001). This had followed issuance of a Notice of Proposed Rulemaking (NPRM) in the same proceeding. *See* 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14, *Notice of Proposed Rule Making*, 16 FCC Rcd 2763 (2001).
- (4) Commission clarified its competitive bidding “anti-collusion rule.” *See* In the Matter of Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001).
- (5) Commission adopted competitive bidding rules for cellular rural service areas. *See* In re Implementation of Competitive Bidding Rules to License Certain Rural Service Areas, WT Docket No. 01-32, *Report and Order*, 17 FCC Rcd 1960 (2002).
- (6) Commission adopted exceptions to the “controlling interest” standard’s fully diluted requirements for “rights of first refusal” and “put” options. *See* In re Amendment of Part 1 of Commission’s Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Eighth Report and Order*, 17 FCC Rcd 2962 (2002).
- (7) Bureau streamlined competitive bidding rules through adoption of an order making conforming edits to service-specific competitive bidding rules and portions of the Part

- 1 general competitive bidding rules in accordance with the authority delegated by the Commission. *See* In the Matter of Amendment of Parts 1, 21, 22, 24, 25, 27, 73, 74, 80, 90, 95, 100, and 101 of the Commission Rules – Competitive Bidding, *Order*, 17 FCC Rcd 6534 (2002).
- (8) Commission streamlined its licensing process for Automated Maritime Telecommunications System (AMTS) stations by migrating to geographic area licensing. *See* Amendment of the Commission’s Rules Concerning Maritime Communications, PR Docket No. 92-257, *Second Memorandum Opinion and Order and Fifth Report and Order*, 17 FCC Rcd 6685 (2002).
- (9) Commission adopted competitive bidding rules for Multichannel Video Data & Distribution Service (MVDDS). *See* In re Amendment of Parts 2 and 25 of Commission’s Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in Ku-Band Frequency Range, ET Docket No. 98-206, *Memorandum Opinion and Order and Second Report and Order*, 17 FCC Rcd 9614 (2002).
- (10) Commission adopted new service rules for licensing a total of 27 megahertz of spectrum from the 216-220 MHz, 1390-1395 MHz, 1427-1429.5 MHz, 1429.5-1432 MHz, 1670-1675 MHz, and 2385-2390 MHz bands. *See* Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429.5 MHz, 1429.5-1432 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, WT Docket No. 02-8, *Report and Order*, 17 FCC Rcd 9980 (2002). This order had followed the issuance of an NPRM in the same proceeding. *See* Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429.5 MHz, 1429.5-1432 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, WT Docket No. 02-8, *Notice of Proposed Rulemaking*, 17 FCC Rcd 2500 (2002).
- (11) Commission adopted competitive bidding rules for the lower 700 MHz band. In the Matter of Reallocation and Service Rules for the Lower 700 MHz Band, GN Docket No. 01-74, *Report and Order*, 17 FCC Rcd 2153 (2002). In the Matter of Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Memorandum Opinion and Order*, 17 FCC Rcd 11613 (2002).
- (12) Commission granted small and mid-sized CMRS carriers temporary, limited relief from the E911 Phase II implementation rules. *See* Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841 (2002).
- (13) Commission extended the wireless LNP implementation deadline for a period of one year until November 24, 2003, to allow adequate time to resolve all outstanding wireless LNP implementation issues, including training personnel and other non-technical tasks, and critically, public safety coordination. *See* In the Matter of Verizon Wireless’s Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation, WT Docket No. 01-184, *Memorandum Opinion & Order*, 17 FCC Rcd 14972 (2002).

- (14) Commission revised and streamlined several rules applicable to Part 101 microwave licenses, including allowing private operational fixed microwave service (POFS) licensees to lease reserve capacity to common carriers for common carrier traffic as well as conditional operation in the 952.95-956.16 and 956.55-959.75 MHz bands. It also specified a channel plan for the 23 GHz band. *See* Amendment of Part 101 of the Commission's Rules to Streamline Processing of Microwave Applications in the Wireless Telecommunications Services, WT Docket No. 02-218, *Report and Order*, 17 FCC Rcd 15040 (2002).
- (15) Commission modified or eliminated Part 22 Cellular rules that had become outdated due to technological change, increased competition, or supervening rules. Among other things, sunset the requirement that cellular licensees provide analog service. *See* Year 2000 Biennial Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, WT Docket No. 01-108, *Report and Order*, 17 FCC Rcd 18401 (2002); Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, WT Docket No. 01-108, *Erratum*, DA 02-2969 (rel. Nov. 4, 2002). This order had followed the issuance of an NPRM in this same proceeding. *See* Year 2000 Biennial Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, WT Docket No. 01-108, *Notice of Proposed Rulemaking*, 16 FCC Rcd 11169 (2001).
- (16) Commission further modified or eliminated its Part 22 Cellular rules. *See* Year 2000 Biennial Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, WT Docket No. 01-108, *Second Report and Order*, 17 FCC Rcd 18485 (2002); Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, WT Docket No. 01-108, *Erratum*, DA 02-2969 (rel. Nov. 4, 2002).
- (17) Commission eliminated the wireless resale rule, which prohibited CMRS providers from unreasonably restricting resale of their services, with the rule being sunset on November 24, 2002. *See* Notice Commencement of Five-Year Preceding Termination of Resale Rule Applicable to Certain Covered Commercial Mobile Radio Service Providers, CC Docket No. 94-54, *Public Notice*, FCC 94-54, 13 FCC Rcd 17427 (1998).
- (18) Commission provided procedural guidelines regarding the documentation of Public Safety Answering Point (PSAP) readiness. *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order on Reconsideration*, FCC 02-318 (rel. Nov. 26, 2002).

II. PROCEEDINGS INITIATED/REVIEW PENDING

- (1) Commission has proposed possible revision or elimination of requirements placed on CMRS carriers regarding obligations to provide roaming. *See Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Service*, WT Docket No. 00-193, *Notice of Proposed Rulemaking*, 15 FCC Rcd 21628 (2000).
- (2) Commission has proposed revisions to the rules and policies governing low power (two watt) operations in the 450-470 MHz band. *See Amendment of Part 90 of the Commission's Rules and Policies for Applications and Licensing of Low Power Operations in the Private Land Mobile Radio 450-470 MHz Band*, WT Docket No. 01-146, *Notice of Proposed Rulemaking*, 16 FCC Rcd 14946 (2001).
- (3) Commission has initiated a rulemaking to revise and streamline requirements for applications affecting Quiet Zones. *See Review of Quiet Zones Application Procedures*, WT Docket No. 01-319, *Notice of Proposed Rulemaking*, 16 FCC Rcd 20690 (2001).
- (4) Commission has allocated 50 megahertz of spectrum in the 4940-4990 MHz band for fixed and mobile services in support of public safety and is considering service rules for this band. *See The 4.9 GHz Band Transferred from Federal Government Use*, WT Docket No. 00-32, *Second Report and Order and Further Notice of Proposed Rulemaking*, 17 FCC Rcd 3955 (2002).
- (5) Commission has proposed to amend Section 1.937 to prohibit the filing of repetitious license applications in the Wireless Radio Service. *See Amendment of Section 1.937 of the Commission's Rules Concerning Repetitious or Conflicting Applications*, WT Docket No. 02-87, *Notice of Proposed Rulemaking*, 17 FCC Rcd 5628 (2002).
- (6) Commission has proposed to consolidate, revise, and streamline the Part 80 rules to address new international maritime requirements, improve the operational ability of users of marine radios, and remove unnecessary or duplicative requirements. *See Amendment of Parts 13 and 80 of the Commission's Rules Concerning Maritime Communications*, WT Docket No. 00-48, *Report and Order and Further Notice of Proposed Rulemaking*, 17 FCC Rcd 6741 (2002).
- (7) Commission has proposed new licensing and service rules to promote the commercial development and growth of spectrum in the 71-76 GHz, 81-86 GHz and 92-95 GHz bands. *See Allocation and Service Rules for the 71-76 GHz, 81-86 GHz and 92-95 GHz Bands*, WT Docket No. 02-146, *Notice of Proposed Rulemaking*, 17 FCC Rcd 12182 (2002).
- (8) Commission has solicited comment on whether to modify frequency coordination procedures for the Public Safety Pool below 470 MHz. *See Amendment of Sections 90.20 and 90.175 of the Commission's Rules for Frequency Coordination of Public Safety Frequencies in the Private Land Mobile Radio Below-470 MHz Band*, WT Docket 02-285, *Notice of Proposed Rulemaking*, FCC 02-255 (rel. Sept. 19, 2002).

- (9) Bureau is in the process of reviewing and assessing findings of an independent inquiry regarding technical and operational barriers to wireless E911 deployment. *See* In the matter of Year 2000 Biennial Review – Wireless Telecommunications Bureau Seeks Comment on Report of Technical and Operational Wireless E911 Issues, WT Docket No. 02-46, *Public Notice*, DA 02-2666 (rel. Oct. 16, 2002).
- (10) Bureau is evaluating comments filed in response to the Wireless Communications Association International, Inc., the National ITFS Association and the Catholic Television Network white paper seeking revisions to the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) regulatory regime. *See* “Wireless Telecommunications Bureau Seeks Comment on Proposal to Revise Multichannel Multipoint Distribution Service and the Instructional Television Fixed Service Rules,” *Public Notice*, DA 02-2732 (rel. Oct. 17, 2002).
- (11) Commission is in the process of resolving petitions for reconsideration that seek amendment or clarification of the “controlling interest” standard adopted as the Part 1 ownership attribution rule. *See* In re Amendment of Part 1 of Commission’s Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Second Order on Reconsideration of the Third Report and Order, and Order on Reconsideration of the Fifth Report and Order*.

APPENDIX II
COMMENTING PARTIES (DOCKET NO. 02-310)

Comments:

1. American Association of Paging Carriers (“AAPC”)
2. American Petroleum Institute (“API”)
3. Cellular Telecommunications & Internet Association (“CTIA”) (filed both a Petition and Comments)
4. Commnet Capital, LLC (“Commnet”)
5. Dobson Communications Corp., Rural Cellular Corp. and Western Wireless Corp. (“Dobson *et al.*”)
6. Lucent Technologies, Inc. (“Lucent”)
7. Motorola, Inc. (“Motorola”)
8. The National Emergency Number Association (NENA), the Association of Public-Safety Communications Officials-International, Inc. (APCO) and the National Association of State Nine One One Administrators (NASNA) (“NENA, APCO, NASNA”)
9. National Telecommunications Cooperative Association (“NTCA”)
10. Powerwave, Inc. (“Powerwave”)
11. Radiosoft
12. United States Telecommunications Association (“USTA”)
13. Weblink Wireless, Inc. (“Weblink”)
14. Westel Communications, Inc. (“Westel”)
15. Winstar Communications, LLC (“Winstar”)

Reply Comments:

1. American Mobile Telecommunications Association, Inc. (“AMTA”)
2. Association of Public-Safety Communications Officials-International, Inc.
3. Leap Wireless International
4. Personal Communications Industry Association (“PCIA”)
5. Rural Cellular Association (“RCA”)
6. Sprint Corporation (“Sprint”)
7. USTA
8. Warren Havens and Telesaurus Holdings GB, LLC (dba LMS Wireless) (“LMS Wireless”)

Ex Parte Comments:

1. Globe Wireless (“Globe”)
2. Texas RSA 15B2 Limited Partnership, Enterprise Wireless PCS, LLC, and Uintah Basin Electronic Telecommunications (“Texas RSA 15B2 *et al.*”)

APPENDIX III

Staff Acknowledgements

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